

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
(916) 274-5721  
FAX (916) 274-5743  
[www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



Attachment No. 2

**INITIAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 7, Subchapter 21, Article 1, Section 8615  
of the Telecommunications Safety Orders.

**Fall Protection for Telecommunication Workers****SUMMARY**

This rulemaking action is being initiated at the request of the Division of Occupational Safety and Health (Division). The Division submitted a Form 9, Request for New, or Change in Existing Safety Order, dated January 16, 2003, recommending that Section 8615(g) of the Telecommunication Safety Orders (TSO), which contains fall protection requirements for telecommunication industry workers, be updated for consistency with similar fall protection provisions contained in the Electrical Safety Orders. The Division noted former rulemaking actions that amended Section 2940.6 High Voltage Electrical Safety Orders (HVESO), and Section 2320.8 of the Low Voltage Electrical Safety Orders (LVESO) such that both Electrical Safety Orders contain language verbatim of each other with regard to how and when electrical workers are to be protected from falling from elevated locations when working from poles, towers, and similar structures, with the exception of point to point travel.

The Division and Board staff note that because existing language in TSO Section 8615(g) is silent with regard to point to point travel, it may be interpreted by the California Occupational Safety and Health Appeals Board (OSHAB) to only require employees to use fall protection when they are working at a stationary, elevated location on a pole, tower or other structure. In an OSHAB Decision in the Matter of the Appeal of Pacific Gas and Electric Company, Docket No. 84-R1D2-850, dated March 7, 1985, an administrative law judge (ALJ) granted the employer's appeal regarding an alleged violation of HVESO Section 2940.6(b)(1), which at the time was essentially verbatim of existing TSO Section 8615(g). In the decision, the ALJ stated that "climbing up or descending from an elevated position on a power pole is not the same as working at an elevated location on the pole and therefore no personal fall protection is required." Both the Division and Board staff find the resulting condition places telecommunication workers at risk of a fall from an elevated location regardless of whether they are working at a fixed position or moving from point to point.

The Division and Board staff agree that existing TSO Section 8615(g) must be updated for consistency with industry practice and other Title 8 requirements which similarly address this

issue. Board staff concurs with the Division's proposed language for amending Section 8615(g) as contained in their January 16, 2003 Memorandum, and recognizes the telecommunication industry practice of allowing only qualified persons, as defined in the TSO, to engage in point to point travel under certain conditions without the use of fall protection, a distinction absent in existing Section 8615(g). The Board believes that the proposed amendments to Section 8615(g) will effectively clarify to employers when and what type of fall protection is required, while recognizing a reasonable exception to these requirements for point to point travel by experienced telecommunication workers.

In addition, as a result of further review and for consistency with other existing Title 8 fall protection requirements, the Board proposes clarifying amendments to existing Section 8615(f)(1) to eliminate the current association between fall arrest devices and body belts (which could subject employees to fall arrest forces and serious injury) and straps, consistent with existing Title 8 prohibitions contained in standards such as the Construction, Electrical and General Industry Safety Orders. To that end, an amendment to subsection (f)(1) is proposed which would contain a reference to the use of the personal fall protection devices outlined in the amendments to Section 8615(g) when standard railings meeting the requirements of General Industry Safety Orders Section 3209 are not provided on elevated work platforms.

#### SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This proposed rulemaking action contains minor, nonsubstantive revisions. These nonsubstantive revisions are not all discussed in this Informative Digest, however, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

##### Section 8615. Overhead Lines.

Section 8615 contains various requirements specific to overhead lines that address the handling of suspension strands, testing of wood poles, pole inspections and tests, inspection and testing requirements for cable suspension strands, use of elevated work platforms, fall protection, installation and removal of cables and wires, work around energized conductors and the use of metal tapes and ropes.

Subsection (f)(1) specifies that unless standard railings meeting the requirements of Section 3209 of the General Industry Safety Orders are provided, suitable fall-arresting devices such as safety straps and body belts shall be used while working on elevated work platforms including aerial splicing platforms, pole platforms, ladder platforms, pole balconies and pole seats. For consistency with other Title 8 fall protection requirements, including the proposed amendments to Section 8615(g), it is proposed to revise subsection (f)(1) to require that personal fall protection devices as specified in subsection (g) shall be used when standard railings are not provided. The proposed revision is necessary to clarify which fall protection devices are permitted, and to ensure consistency in fall protection requirements contained throughout Title 8.

Subsection (g) requires that when employees work more than 4 feet above the ground on poles, towers or similar structures, employers are to require that employees use body belts/safety belts and safety straps/lanyards. It is proposed to title the subsection "Fall Protection," and revise it to read, "When work is performed at elevated locations more than 4 feet (1.2 meters) above ground on poles, towers or similar structures, to the employer shall require the employees to use either fall arrest equipment, work positioning equipment or travel restricting equipment, if other fall protection methods have not been provided (e.g., guardrails, safety nets, etc.)." It is also proposed to prohibit the use of body belts as part of a fall arrest system, consistent with other existing Title 8 fall protection standards, and include an exception which permits point to point travel by a qualified person unless conditions such as ice, high winds (as defined in Section 2951(f) of the High Voltage Electrical Safety Orders), design of the structure, or other conditions (e.g., chemical contaminants) prevent the employee from gaining a firm hand or foothold while traveling.

The proposed amendments are verbatim of fall protection requirements contained in Sections 2320.8 and 2940.6 of the Low and High Voltage Electrical Safety Orders, respectively, and are necessary for consistency purposes. The revisions will clarify to the employer when and what type of fall protection is necessary to protect telecommunication employees working at elevated locations, and permit point to point travel under specified conditions.

#### DOCUMENTS RELIED UPON

1. Memorandum from the Division of Occupational Safety and Health dated January 16, 2003, to the Occupational Safety and Health Standards Board, Request for New or Change in Existing, Safety Order, (Form 9).
2. Occupational Safety and Health Appeals Board Decision, Docket No. 84-R1D2-850, In the Matter of the Appeal of Pacific Gas and Electric Company, dated March 7, 1985.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

#### REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

#### SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

## COST ESTIMATES OF PROPOSED ACTION

### Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action as Board staff has not identified any state agencies that perform telecommunications work from poles, towers or similar structures. Typically such services are not performed by state employees but are contracted out to private sector providers.

### Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

### Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposal clarifies what type of fall protection is to be used, either personal fall protection or conventional fall protection (safety nets, guardrails), and when telecommunication workers may be allowed to work without the use of fall protection, i.e., point to point travel.

### Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

### Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

### Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

## DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the

proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standards do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

Local agencies will be required to comply with the proposal and thereby incur some costs. These costs may be required to be reimbursed by the state pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

#### EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

#### ASSESSMENT

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

#### ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.